



SOBEL PEVZNER, LLC

NEW YORK ♦ NEW JERSEY ♦ PENNSYLVANIA

AARON C. GROSS, ESQ.

464 New York Avenue, Suite 100
Huntington, NY 11743
Tel (631) 549-4677
Fax (631) 549-0826
Agross@SobelPevzner.com

New York City Office
30 Vesey Street, 8th Floor
New York, NY 10007
Tel (212) 216-0020
Fax (646) 688-3646

April 5, 2023

VIA ECF

Honorable Katherine Polk Failla
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

MEMO ENDORSED

Re: *Behlin v. Rite Aid Pharmacy Store et al.*
Case No. 1:18-cv-04335-KPF
File No.: RA-14430

Dear Judge Failla:

As you are aware, my office represents the interests of the defendant, Rite Aid Pharmacy Store, in regard to the above-referenced matter. This letter is being filed solely on the request of defendant.

As the Court was advised in the recent Joint Status Letter, dated March 24, 2023 (ECF #142), filed by the parties, the plaintiff had been produced for a virtual deposition on March 20, 2023. Based on the testimony given by plaintiff as to his underlying claims involving personal injuries, as against defendant Rite Aid, defendant is seeking authorization of this Honorable Court pursuant to F.R.C.P. 35 to have an independent orthopedic medical examination conducted of the plaintiff.

In that regard, plaintiff testified at his deposition with regard to the above as follows: (Copies of pages of the relevant deposition testimony are attached hereto for the sake of the Court.)

Page 7, Lines 17 to 25: Plaintiff testified that he is expected to be released from his sentence of incarceration from the Governor Correctional Facility on July 6, 2023;

Page 37, Line 17 - Page 38 Line 10: Plaintiff testified that a Mr. Luna, a Rite Aid employee, threw a garbage can at him while he was at the north corner of 146 Street and Broadway.

Page 39, Line 23 - Page 40, Line 6: Plaintiff testified that the garbage can struck the left side of his body, upper leg area towards his left hip.

Page 55, Line 6 - Page 56, Line 2: Plaintiff testified that while in Riker's Island jail awaiting trial following his arrest, he made complaints to medical personnel therein that he was experiencing pain in his back and hip.

Page 60, Line 5 - Page 61, Line 14: Plaintiff testified that after his trial and while serving his sentence at the Clinton Correctional facility, he complained of hip and back pain and as a result underwent physical therapy and x-rays.

Page 67, Lines 11 to Page 68, Line 15: Plaintiff testified that at the time of his deposition of March 20, 2023, and while incarcerated in the Governor Correctional facility, he underwent medical treatment for his back because he was still experiencing pain, and as a result, an MRI examination of his lumbar spine was going to be scheduled, although he was unaware of the actual date for the examination.

It is the defendants' position that as the remaining causes of action against the defendants include the allegation of assault and battery with personal injuries, based on plaintiff's testimony of continued medical treatment for his back and hip continuing seven years after the date of incident of June 20, 2015, resulting in the future scheduling of an MRI examination of the lumbar spine, it is clear that plaintiff's physical condition will come into controversy at any trial of this matter. Accordingly, based on his claims of personal injury and deposition testimony, good cause has been shown by defendants to afford them the opportunity to have an independent orthopedic medical examination of the plaintiff conducted subsequent to his release from incarceration on July 6, 2023.

Since the completion of the plaintiff's deposition, defendant has forwarded to plaintiff's counsel an authorization for the release of all of plaintiff's medical records including the most recent treatment and expected future medical examinations.

Accordingly, it is respectfully submitted that this Court grant defendant's authority to have an independent medical examination conducted as it is vital and necessary to the defense of defendants in light of the personal injury claims made by plaintiff.

Sincerely,

SOBEL PEVZNER, LLP

Aaron C. Gross

AARON C. GROSS

AG:lm1

The Court is in receipt of Defendant's above letter motion seeking Court approval of a medical examination of Plaintiff. (Dkt. #144). Counsel for Plaintiff is directed to respond to the above letter motion by **April 13, 2023**. Should Plaintiff's counsel believe that any response to the above letter motion is outside the scope of their limited representation in this case, they may apprise the Court in their response.

The Clerk of Court is directed to mail a copy of this endorsement to Plaintiff's address of record.

Dated: April 11, 2023
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE